IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.444 OF 2007

Vandana Balwant Kapoor ...Appellant
vs.
Municipal Corporation of
Greater Mumbai and another ...Respondents

Mr.Vipin Mishra for the Appellant
Ms Geeta Joglekar for B.M.C.
M/s.Jhangiani, Narula & Associates for Respondent No.2.

CORAM: A.S.OKA,J.
DATE : JUNE 12, 2007.

P.C.:

1. Heard learned Counsel for the parties. The Appellant is the original Plaintiff who has taken exception to the order dated 4th December 2006 passed by the trial Court by which a Notice of Motion taken out by the Appellant-Plaintiff for temporary injunction has been dismissed.

2. The Appellant-Plaintiff filed a suit for declaration for challenging the notice issued by the first Respondent-Municipal Corporation and the order dated 13th March 1999 passed by the Ward Officer holding that the offending structure is illegal. The offending structure is enclosed stilt portion with brick masonry wall and aluminium frame work with glass and a mezzanine floor with ladi coba constructed therein.

3. The learned Counsel for the Appellant submitted that the Appellant has acquired the suit structure from a builder in the year 1984 and the same has been assessed to municipal

taxes. He submitted that the Trial Court ought to have protected the suit structure.

4. I have considered the submissions. It is obvious that there was no permission granted by the Municipal Corporation for enclosing the stilt portion and for construction of mezzanine floor therein. The Trial Court has rightly held that the disputed construction is unauthorised. Therefore, the Trial Court has declined to grant equitable relief of temporary injunction in favour of the Appellant. There is nothing on record to show that the offending construction is authorised. There is no material to show that the structure existed before the datum line.Hence, no interference is called for in the impugned order.

5. The learned Counsel for the Appellant submitted that he may be permitted to apply for regularisation of the construction. Considering the nature of the suit structure, in the present proceeding said relief cannot be granted. It is for the Appellant to take appropriate steps.

6. Appeal is accordingly dismissed. On the prayer made by the Advocate for the Appellant, it is directed that both the parties will maintain status quo as of today in all respects in respect of the offending structure for a period of six weeks from today. It is made clear that no further extension will be granted.

JUDGE